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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 JAMES HENRY ANDERSON,) Case No. 1:21-cv-01451-SAB (PC)
12 Plaintiff,)
13 v.) ORDER TO SHOW CAUSE WHY ACTION
14 DR. OLGA BEREGOVSKAYA,) SHOULD NOT BE DISMISSED, WITHOUT
15 Defendant.) PREJUDICE, FOR FAILURE TO EXHAUST THE
16) ADMINISTRATIVE REMEDIES
17)

18 Plaintiff James Henry Anderson is proceeding *pro se* and *in forma pauperis* in this civil rights
19 action pursuant to 42 U.S.C. § 1983.

20 Currently before the Court is Plaintiff's complaint, filed September 29, 2021.

21 **I.**

22 **SCREENING REQUIREMENT**

23 The Court is required to screen complaints brought by prisoners seeking relief against a
24 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court
25 must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous
26 or malicious," that "fail[] to state a claim on which relief may be granted," or that "seek[] monetary
27 relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); see also 28
28 U.S.C. § 1915A(b).

1 A complaint must contain “a short and plain statement of the claim showing that the pleader is
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do
4 not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550
5 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally participated
6 in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

7 Prisoners proceeding *pro se* in civil rights actions are entitled to have their pleadings liberally
8 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th
9 Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be facially plausible, which
10 requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is
11 liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,
12 969 (9th Cir. 2009). The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and
13 “facts that are ‘merely consistent with’ a defendant’s liability” falls short of satisfying the plausibility
14 standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

15 II.

16 EXHAUSTION OF ADMINISTRATIVE REMEDIES

17 Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with respect
18 to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any
19 jail, prison, or other correctional facility until such administrative remedies as are available are
20 exhausted.” 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available administrative
21 remedies prior to filing suit. Jones v. Bock, 549 U.S. 199, 211 (2007); McKinney v. Carey, 311 F.3d
22 1198, 1199-1201 (9th Cir. 2002). Exhaustion is required regardless of the relief sought by the prisoner
23 and regardless of the relief offered by the process, Booth v. Churner, 532 U.S. 731, 741 (2001), and the
24 exhaustion requirement applies to all suits relating to prison life, Porter v. Nussle, 435 U.S. 516, 532
25 (2002).

26 Prisoners are required to exhaust before bringing suit. Booth, 532 U.S. at 741. From the face
27 of Plaintiff’s Complaint, it is clear that Plaintiff filed suit prematurely and in such instances, the case
28 may be dismissed. Albino v. Baca, 747 F.3d 1162, 1169 (9th Cir. 2014) (en banc) (where failure to

1 exhaust is clear from face of complaint, case is subject to dismissal for failure to state a claim under
 2 Rule 12(b)(6)); Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 2003) (“A prisoner’s concession to
 3 nonexhaustion is a valid ground for dismissal....”) (overruled on other grounds by Albino, 747 F.3d at
 4 1168-69); see also Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir. 2014) (“Dismissal for failure to
 5 state a claim under § 1915A ‘incorporates the familiar standard applied in the context of failure to
 6 state a claim under Federal Rule of Civil Procedure 12(b)(6).’ ”) (quoting Wilhelm v. Rotman, 680
 7 F.3d 1113, 1121 (9th Cir. 2012)).

8 There are currently two levels of review within the California prison administrative grievance
 9 process. Cal. Code Regs. tit. 15, §§ 3482, 3483, 3486. Generally, “[c]ompletion of the review process
 10 by the Office of Appeals constitutes exhaustion of all administrative remedies available to a claimant
 11 within the Department.” Cal. Code Regs. tit. 15, § 3486. The Supreme Court has held that there are no
 12 “special circumstances” exceptions to the exhaustion requirement. Ross v. Blake, 578 U.S. 1174
 13 (2016). However, the one significant qualifier is that “the remedies must indeed be ‘available’ to the
 14 prisoner.” Id. As described by the Ross Court:

15 [A]n administrative procedure is unavailable when (despite what regulations or guidance
 16 materials may promise) it operates as a simple dead end—with officers unable or consistently
 17 unwilling to provide any relief to aggrieved inmates. See 532 U.S. at 736, 738, 121 S.Ct. 1819.
 18 . . . Next, an administrative scheme might be so opaque that it becomes, practically speaking,
 19 incapable of use. . . . And finally, the same is true when prison administrators thwart inmates
 20 from taking advantage of a grievance process through machination, misrepresentation, or
 intimidation. . . . As all those courts have recognized, such interference with an inmate's
 pursuit of relief renders the administrative process unavailable. And then, once again, §
 1997e(a) poses no bar.

21 Id. at 1859-60.

22 It is clear from the face of Plaintiff’s complaint that he has not exhausted administrative remedies
 23 pursuant to the Prison Litigation Reform Act, 41 U.S.C. § 1997 (e)(a), before filing this lawsuit.
 24 On the form complaint, Plaintiff checks the box “no” in response to the questions whether there is an
 25 administrative remedy process at the institution, whether he submitted a request for administrative relief
 26 and whether he filed an appeal to the highest level of review. (Compl. at 3.) However, Plaintiff writes
 27 “I was at Wasco Reception Facility awaiting transfer back to main-line. No law library access and or
 28 legal knowledge.” (Id.) Thus, Plaintiff concedes that the administrative remedies were not completed

1 prior to filing the instant action. Further, Plaintiff has failed to demonstrate that any of the circumstances
2 set forth in Ross apply. Plaintiff's lack of legal knowledge that he was required to exhaust through all
3 levels of administrative review before filing suit in federal court an exception. See Gurley v. Clark, 620
4 F. App'x 671, 673 (10th Cir. 2015) ("Lack of knowledge of the exhaustion requirement does not excuse
5 an inmate's failure to exhaust administrative procedures."). In addition, Plaintiff's claim that he did not
6 have access to the law library does not explain why or how the exhaustion process was not available to
7 him to utilize prior to filing suit. Accordingly, Plaintiff shall be required to show cause why this case
8 should not be dismissed, without prejudice, for failure to exhaust remedies prior to filing suit.

9 **III.**

10 **ORDER**

11 Based on the foregoing, it is HEREBY ORDERED that:

- 12 1. Plaintiff shall show cause in writing within twenty-one (21) days of the date of service
13 of this order as to why this case should not be dismissed for Plaintiff's failure to exhaust
14 administrative remedies before filing suit; and
- 15 2. The failure to respond to this order will result in a recommendation to a district judge to
16 dismiss this action without prejudice.

17
18 IT IS SO ORDERED.

19 Dated: September 30, 2021



UNITED STATES MAGISTRATE JUDGE